

Date: August 1, 2001

BRIEFING FOR THE SECRETARY

PREPARED BY: Panama City Field Office

FROM: Marshall Jones, Acting Director, Fish and Wildlife

SUBJECT: Final designation of critical habitat for the piping plover on its wintering grounds.

PURPOSE OF BRIEFING DOCUMENT: Status update.

ISSUES:

- C The final designation (66 FR 36038, July 10, 2001) includes 165,211 acres along 1,798 miles of coastline in the States of NC, SC, GA, FL, AL, MS, LA, and TX.
- C The proposed designation (65 FR 41782, July 6, 2000) included 2,104,879 acres of coastline habitat in the States identified above. The acreage included in the final designation was substantially reduced from the proposed acreage due to the removal of a 500-meter buffer applied to each unit to account for variations in the coastline due to erosion and accretion over time. In addition, some areas were removed because available data did not show that they were used consistently by piping plovers. Each unit is now defined by a precise textual description that includes only the habitat elements required by the piping plover and accounts for coastline shifts.
- C Thirteen public meetings and 9 public hearings were held throughout the 8 states concerning the proposed designation. More than 6,000 comments were received on the proposal. Most comments concerned the perceived effects of the designation on beach nourishment, inlet dredging, beach driving, and general beach use. The proposed designation was particularly controversial in North Carolina and Marco Island, FL.
- C The Service has received only a few calls of interest following publication of the final designation. We understand that Tyndall Air Force Base and Hurlbert Field in Florida each received a congressional inquiry asking about the effects of the designation on their operations.
- C This designation of plover wintering habitat was the result of two court orders involving the Great Lakes and Northern Great Plains breeding populations. Because the two breeding populations use the same wintering habitats, the designation of wintering critical habitat for the two populations was consolidated. Although the Atlantic breeding population was not the subject of these two lawsuits, because wintering habitat used by the Atlantic breeding population is also used by the other two breeding populations, this wintering habitat designation encompasses the wintering habitat of all three North American breeding populations. Final

designation of breeding critical habitat for the Great Lakes breeding population was completed in April 2001; final designation of breeding critical habitat for the Northern Great Plains breeding population is due in April 2002.

MAIN DECISION OR MESSAGE: Because critical habitat designations have been infrequent, misconceptions by other Federal agencies and the public exist regarding the regulatory implications of critical habitat. Critical habitat does not set up a preserve or refuge. Section 7 of the Endangered Species Act requires Federal agencies to consult with the Service to ensure that the actions they carry out, fund, or permit do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. Generally, projects in areas inhabited by plovers already undergo section 7 consultation to ensure avoidance of jeopardy to the species, and little, if any, change in project requirements is expected to result from the designation of critical habitat.

BUREAU PERSPECTIVE: The Service will continue efforts to increase understanding by other Federal agencies and the public regarding the effects of plover critical habitat designation on coastal projects and beach use.

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